



July 20, 2000

Ms. Sara Hartin
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2000-2725

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137319.

The City of Copperas Cove (the "city") received written requests for the identity of the individual who filed a complaint against the requestor's business for "unsanitary conditions" and records pertaining to the city's investigation of the complaint. You contend that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information coming within the "informer's privilege." *See generally* Open Records Decision No. 515 (1988). The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983).

In this instance, you have demonstrated that the individual who filed the complaint with the city reported an alleged violation of a Class C misdemeanor that carries criminal penalties. Accordingly, the city may withhold the complainant's name and address, which appear on the city's Complaint Form, pursuant to the informer's privilege and section 552.101 of the Government Code.¹

¹Because we resolve this aspect of your request under the informer's privilege, we need not address whether this information is otherwise protected by common law privacy.

We now address whether the city may withhold the remaining information at issue pursuant to section 552.108 of the Government Code. Section 552.108(a) excepts from required public disclosure “[i]nformation held by a *law enforcement agency or prosecutor* that deals with the detection, investigation, or prosecution of crime” In this instance, you have not adequately demonstrated to this office that the city’s Code Enforcement Department is a “law enforcement agency” for purposes of section 552.108. *See* Attorney General Opinion MW-575 (1982) (regulatory agency not “law enforcement agency,” even though it is charged with duty of enforcing its own statute); Open Records Decision No. 199 (1978) (same). Nor have you demonstrated that a law enforcement agency or prosecutor maintains an interest in withholding the information at issue from the public at the present time. *See, e.g.,* Open Records Decisions Nos. 372 (1983), 286 (1981) (“law enforcement exception” may be invoked by any proper custodian of information relevant to an incident involving allegedly criminal conduct under active criminal investigation or prosecution). We conclude, therefore, that you have not met your burden of demonstrating the applicability of section 552.108 to the remaining information at issue.

In summary, the city may withhold the complainant’s name and address pursuant to the informer’s privilege, as incorporated into section 552.101 of the Government Code. The remaining information contained in the city’s Complaint Form and “Service Call” report must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Julie Reagan Watson" followed by a horizontal line.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/RWP/ljp

Ref: ID# 137319

Encl. Submitted documents

cc: Mr. Frank DiMuccio, Jr.
Cover Feed & Seed
2314 E. Highway 190
Copperas Cove, Texas 76522
(w/o enclosures)